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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,803	09/18/2003	Christopher F. Lang	CM-076B US	6138
24804	7590	06/16/2004	EXAMINER	
S.C. JOHNSON COMMERCIAL MARKETS INC 8310 16TH STREET, M/S 510 PO BOX 902 STURTEVANT, WI 53177-0902			NOVOSAD, JENNIFER ELEANORE	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Offic Action Summary</b>	<b>Applicati n No.</b>	<b>Applicant(s)</b>	
	10/665,803	LANG ET AL.	

  

<b>Examin r</b>	<b>Art Unit</b>	
Jennifer E. Novosad	3634	

-- The MAILING DATE of this communication appears in the cover sheet with the correspondence address --

#### Peri d f r Reply

#### A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 05 April 2004.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disp sition of Claims

4) Claim(s) 3,4 and 6-8 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 3,4 and 6-8 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 18 September 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Pri rity under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 04-05-2004.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

This final Office action is in response to the amendment of April 5, 2004 by which the specification and claims 3, 4, 6, and 7 were amended.

### ***Claim Objections***

Claims 3 and 4 are objected to because of the following informalities:

In line 10 of claim 3, it is suggested that a --,-- (comma) be inserted after "lower leg section".

In line 10 of claim 4, it is suggested that a --,-- (comma) be inserted after "surface".

In the last line of claim 4, it appears that "member" should be changed to --members--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 6, and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites the limitation "the upper leg disposed above the lower leg" in lines 10-11. There is insufficient antecedent basis for this limitation in the claim. *To correct this*, it appears that --section-- should be inserted after "upper leg" in line 10 and after "lower leg" in line 11.

Claim 6 is rendered indefinite since the recitation "supporting sections" in line 7 of the claim appears to contradict the recitation "the suspending support member defined by a single support arm". *In particular*, it is unclear how the rack can have supporting "sections", i.e., plural, in view of the drawings which show only one supporting section. It is noted that the claim is setting forth (only) one rack and the drawings show that rack having one supporting section. *Thus*, it is suggested that "supporting sections" in line 7 be changed to --a supporting section--. *Similarly*, "sections are defined by extensions of" in line 11 should be changed to --section is defined by an extension of one of--. Note also claim 7 which recites "sections".

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,418,835 (Watts '835).

Watts '835 discloses a support rack for a plastic container (92) whereby the rack comprises a wire body section including at least two support members (44, 54, 50 and 52, 56, 48), a connecting section (58) extending between the support member at first sides (50 and 52) thereof, and supporting sections (60, 64, 68 and 62, 66, 70) extending from opposite sides of the support members (at 47 and 46) for connection to a suspending support member (21); the support members (44, 54, 50 and 52, 56, 48) are defined by two upwardly extending essentially U-

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shaped members, i.e., the members are U-shaped in an inverted manner whereby the shape extends upwardly, and the supporting sections (60, 64, 68 and 62, 66, 70) are defined by two spaced apart arm sections for connection a wall surface (21); and the connecting section (58) being coplanar (see Figure 5) with the support members and the supporting sections extending *essentially* perpendicularly from the support members.

Claims 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,974,799 (Palmer '799).

Palmer '799 discloses a support rack (see Figures 5-7) comprising a wire body section including at least two support members (38 and 38) defined by a multiplicity, i.e., two, of finger members defining undulations and a supporting section (near 36 and 21, etc.) defined by an extension of one of the finger members fro connection to a suspending support member (33) which is defined by a single support arm; and a rolling cart (10).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 1,200,361 (Johnson *et al.* '361) in view of U.S. Patent No. 1,089,882 (Thomas '882). Johnson *et al.* '361 disclose a support rack comprising a wire body section (including 10, 8, 6, 79, 7, 12') including at least two support members (9 - first full element 9 and fourth

element 9 from the right side of Figure 1) that are defined by upwardly extending, essentially U-shaped members; a connecting section (7 and elements 9) extending between the support members at first sides thereof (in the middle of Figure 1); supporting sections (i.e., a first section includes 8, 2, and 10 and a second section includes element 9 on the far left of Figure 1, 12' and 10) extending from opposing sides (far right and left sides of Figure 1) of the support members for connection to a suspending support member (1) whereby the supporting sections are defined by an upper leg section disposed above a lower leg section; the support members, connecting section, and supporting sections being coplanar and monolithic.

The claims differ from Johnson *et al.* '362 in requiring: (a) the upper and leg to be for connection to the suspending support member in a swivel manner, and (b) the U-shaped members to extend in a direction opposite the lower leg section.

*With respect to (a), and (b),* Thomas '882 discloses a rack comprising a body section including at least two support members (2<sup>nd</sup> and 5<sup>th</sup> elements 14 from the top of Figure 1) defined by two upwardly extending, essentially U-shaped members (each U-shape is defined by an element 14 and a portion of 8); a connecting section (the portion of element 8 extending between the 2<sup>nd</sup> and 5<sup>th</sup> elements 14) extending between first sides of the support members; supporting sections extending from second sides of the support members for connection to a suspending support member (1) in a swivel manner (at 3) whereby the supporting sections are defined by an upper leg section (comprised of the portion of element 8 extending upwardly from the 2<sup>nd</sup> element 14 and including 7, the top portion of 5 and 4 and 3 at the top of Figure 1) and a lower leg section (comprised of the portion of element 8 extending downwardly from the 5<sup>th</sup> element

14 and including the lower portion of 5, and 4 and 3 at the bottom of Figure 1) whereby the u-shaped members extend in a direction opposite to the lower leg section.

*Thus*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Johnson *et al.* '361 with upper and lower leg sections connected to a suspending support member in a swivel member, as taught by Thomas '882, for increased ease in assembly and in use since the consumer can move the rack.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 3, 4, and 6-8 have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessitated by the amendment reciting the following: (a) "being coplanar and monolithic" in line 12 of claim 3, (b) "the connecting section being coplanar with the support members" in line 11 of claim 4, and (c) "the suspending support member defined by a single support arm" in lines 11-12 of claim 6.

#### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703)-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jennifer E. Novosad/jen  
June 9, 2004



Carl D. Friedman  
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